

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	

To: The Commission

COMMENTS OF WEIGEL BROADCASTING COMPANY

Weigel Broadcasting Company urges the Commission to make all reasonable efforts to avoid creating “short markets” in which viewers in a local television market would lose access to low power television stations that broadcast the video programming of one or more national broadcast television networks. Such an outcome would be inconsistent with Congressional intent and the plain language of the Spectrum Act. Moreover, the public interest requires that viewers not lose access to important low power television services that deliver critical news, weather, sports, and entertainment programming in markets that otherwise would be unserved by a national network outlet.

Weigel is the licensee of three low power television stations, all national network affiliates, serving viewers in the South Bend-Elkhart, Indiana designated market area. Digital low power television station WBND-LD is the only local station in the South Bend-Elkhart DMA affiliated with the ABC network, which it broadcasts on its primary program stream.¹ In addition to airing some of the most popular network programming on television, WBND is one of the few low power television stations in the nation to operate its own news department. The station currently produces 22.5 hours each week of local news, weather, and sports programming

¹ In addition, WBND broadcasts a multicast channel that is affiliated with the MeTV network.

that emphasizes community-based stories in the ten counties within the DMA. To provide its viewers with immediate emergency information during times of severe weather, WBND also has made a significant investment in weather forecasting technology.

WBND also is committed to ensuring that its viewers stay informed about their local elections. In 2012, for example, WBND provided real-time election coverage for three primary elections in Indiana and Michigan, as well as two-state election returns during the general election. And the station produces local sports specials that air adjacent to ABC Network coverage of Notre Dame college football games. From late August through mid-November, WBND devotes a substantial amount of its Friday 11:00 PM newscast to coverage of local high school football games from around the region.

In 2011, WBND won two Indiana Broadcasters Association “Spectrum Awards” for Excellence in Broadcasting, and was nominated for the award for Excellence in News Coverage. More recently, the station received two 2012 Midwest Regional Emmy® Award nominations, in competition with the full power major-network affiliated stations not just in South Bend, but also in Chicago and Milwaukee.

Weigel or its affiliates also own and operate digital low power station WMYS-LD, a Telemundo Network and MyNetworkTV affiliate, and WCWW-LP, a CW Network affiliate, both serving the South Bend-Elkhart DMA.² Each station provides exemplary -- and unduplicated -- service to its community.

WMYS, for example, currently is expanding its staff in order to provide local Spanish-language news programming. It airs the Emmy® Award-winning children’s educational series, “Green Screen Adventures,” produced by Weigel, which promotes reading and builds a

² In addition, WCWW broadcasts a multicast channel that is affiliated with the ThisTV network.

foundation for writing, critical thinking and problem solving using sketch comedy, story theatre, game shows, original songs and puppetry.³ WMYS also is a leader in regional sports programming of high interest to viewers in the South Bend-Elkhart DMA. The station airs Big East Conference basketball between Notre Dame and conference opponents. It also broadcasts professional sports of local interest, including Chicago White Sox, Chicago Cubs and Chicago Bulls games, and Indianapolis Colts pre-season football.

Meanwhile, Weigel's WCWW historically has been one of the top-rated CW Network affiliates in diary markets. The station airs a daily 30-minute newscast at 10:00 PM produced in collaboration with WBND.

Stated differently, as full service, major network affiliates, WBND, WMYS and WCWW all are functionally indistinguishable from their full power network affiliated counterparts serving the South Bend-Elkhart market, which has only five full-power stations, of which two are NCE or religious stations. Weigel has made significant commitments of financial and human resources to operate these stations as robust, full-service outlets. Certainly, viewers perceive no distinction, as they depend on the unique service that each station offers. Weigel therefore is deeply concerned that proposals included in the Notice could unintentionally disrupt or diminish these stations' service to their community — or worse, force them off the air — in the event of a repacking of the television band.

³ "Green Screen Adventures" is the recipient of multiple Clarion Awards, presented by the Association of Women in Communications, and Gabriel Awards, presented by the Catholic Academy for Communication Arts; and of the National Association of Broadcaster Education Foundation's "Service to America" award for children's programming.

The Commission appears to interpret the Spectrum Act to mandate protection of only full power and Class A television stations in the repacking process.⁴ The Commission proposes “that full power and Class A television stations will be assigned new channels in the broadcast television spectrum reorganization without regard to whether such channel assignments, or the modified facilities required to implement service on them, would interfere with existing low power television” facilities.⁵ As a result, low power television stations could be “displaced” due to interference with a full power or Class A station that must switch channels during a repacking. In such circumstances, the Notice states, the low power television station “will either have to relocate to a new channel that does not cause interference or else discontinue operations altogether.”⁶ Since there will be fewer available channels after a repacking, there is a significant chance that viewers who rely on low power television stations for important local television services will be, literally, left in the dark.

Recognizing that this outcome would deprive viewers of an important “source of diverse and local television programming,” the Commission asks whether there are any measures it could take to help ensure that viewers do not lose their low power television station services.⁷ Weigel urges the Commission to take steps beyond those identified in the Notice to ensure that, following an incentive auction, the television spectrum band continues to accommodate low power television stations that serve as the only local station broadcasting the video programming of one or more national television networks.

⁴ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357, ¶¶ 74, 118 (rel. Oct. 2, 2012) (“NPRM”).

⁵ NPRM ¶ 358.

⁶ *Id.*

⁷ *Id.* ¶ 359.

Specifically, Weigel encourages the Commission to clear the same amount of broadcast spectrum in every market and, in determining how much spectrum to make available in the forward auction, to ensure that there is a sufficient number of channels in every market to allow a full complement of local network affiliated stations to remain on-air, regardless of whether any such station is a full power, Class A, or low power television station. The NPRM's proposal to use a variable band plan in order to maximize the total amount of spectrum cleared would have the undesirable effect of leaving the new television band too congested to accommodate these important low power television services, and accordingly, should not be adopted.

In enacting the Spectrum Act, Congress did not intend for the incentive auction and repacking process to result in the elimination of low power television station service.⁸ To the contrary, preservation of the service is essential with respect to low power television stations that serve as their local market's sole provider of national network programming. In the Satellite Television Extension and Localism Act of 2010, Congress clearly disfavored the creation of "short markets," which the statute defines to mean "a local market in which programming of one or more of the four most widely viewed television networks nationwide . . . is not offered on the primary stream transmitted by any local television broadcast station."⁹ Preserving viewers' access to this core complement of network television services not only provides viewers with some of the most popular and important programming on television—including national news

⁸ See *Keeping the New Broadband Spectrum Law on Track*: Hearing Before the Subcomm. on Communications and Technology of the H. Comm. on Energy and Commerce, 112th Cong. 70 (2012), <http://democrats.energycommerce.house.gov/sites/default/files/documents/Transcript-Broadband-Spectrum-Law-2012-12-12.pdf> (preliminary transcript) (statement of Rep. Barton) ("I didn't envision that we would have the end result that a low power television station would simply end up off the air. . . . [I]t is not fair at all that the end result is that a low power television station that has been a good licensee ends up totally off the air.").

⁹ Satellite Television Extension and Localism Act of 2010, Pub. L. No. 111-175, § 105, 124 Stat. 1218, 1240 (May 2010)

coverage of presidential elections, severe weather events, and national emergencies—but also ensures that every American can experience a diverse range of programming options.

Weigel welcomes the Commission's efforts to identify measures that could preserve access to the important programming that low power television stations provide.¹⁰ But Weigel is concerned that these proposals do not go far enough in the limited circumstances where a low power station is the sole network affiliate of a national network in its market. In such circumstances, each of the proposals in the Notice likely would result in significant, and potentially fatal, disruptions in viewers' local television services. For instance, channel sharing with other low power television stations may not be a viable option in markets that are particularly congested, since the repacking may not leave sufficient channels for all or any of the low power television stations to share one or more channels. Channel sharing also would limit these stations' ability to offer the high-quality television services that viewers now expect, such as high-definition programming and multicasting.

Meanwhile, limiting distribution of these stations' signals to pay-television or Internet transmission *only* is not an acceptable alternative to free, over-the-air access. Forcing this critical local news, weather, and sports programming and emergency information behind a paywall would deprive a significant number of viewers of service.

In addition, even if the Commission adopted its proposal to prioritize displacement applications submitted during the initial filing window by low power television stations serving as the sole network-affiliated station in the market,¹¹ this approach offers no relief to the viewers who would lose service if the television band is so congested that there are *no* available channels that do not cause interference. Consequently, although the Commission

¹⁰ Notice ¶ 359.

¹¹ *Id.* ¶¶ 360–61.


should provide low power television stations these options, it should not rely on them exclusively to ensure that viewers can continue to access these important television services.

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Weigel appreciates the opportunity to comment on the proposals contained in the Notice and encourages the Commission to take additional steps to ensure that after an incentive auction and repacking, the television band is sufficiently large to accommodate low power television stations that are the sole local affiliate of a national broadcast network in their market. This approach is consistent with the intent of Congress to avoid the creation of short markets where viewers would lose access to these critical television services.

Respectfully submitted,

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